



**Billing Code 3510–33-P**

## **DEPARTMENT OF COMMERCE**

### **Bureau of Industry and Security**

#### **15 CFR Part 774**

**[Docket No. 120330233-2160-01]**

**RIN 0694-AF64**

Revisions to the Export Administration Regulations (EAR): Control of Military Electronic Equipment and Related Items the President Determines No Longer Warrant Control Under the United States Munitions List (USML)

**AGENCY:** Bureau of Industry and Security, Department of Commerce.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule describes how certain articles the President determines no longer warrant control under the United States Munitions List (USML) would be controlled on the Commerce Control List (CCL). Those articles and the USML categories under which they

are currently controlled are: military electronics (Category XI) and certain cryogenic and superconductive equipment designed for installation in military vehicles and that can operate while in motion (Categories VI, VII, VIII, and XV). Military electronics and related items would be controlled by new Export Control Classification Numbers (ECCNs) 3A611, 3B611, 3D611, and 3E611 proposed by this rule. Cryogenic and superconducting equipment for military vehicles and related items would be controlled under new ECCNs 9A620, 9B620, 9D620, and 9E620. This proposed rule also would amend ECCNs 7A001 and 7A101 to apply the missile technology reason for control only to items in those ECCNs on the Missile Technology Control Regime (MTCR) Annex.

This is one in a planned series of proposed rules describing how various types of articles the President determines, as part of the Administration's Export Control Reform Initiative, no longer warrant USML control, would be controlled on the CCL and by the EAR. This proposed rule is being published in conjunction with a proposed rule from the Department of State, Directorate of Defense Trade Controls, which would amend the list of articles controlled by USML Category XI.

**DATES:** Comments must be received by [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** You may submit comments by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. The identification number for this rulemaking is BIS-2012-0045.
- By e-mail directly to [publiccomments@bis.doc.gov](mailto:publiccomments@bis.doc.gov). Include RIN 0694-AF64 in the subject line.
- By mail or delivery to Regulatory Policy Division, Bureau of Industry and Security, U.S. Department of Commerce, Room 2099B, 14th Street and Pennsylvania Avenue, NW, Washington, DC 20230. Refer to RIN 0694-AF64.

**FOR FURTHER INFORMATION CONTACT:** Brian Baker, Director, Electronics and Materials Division, Office of National Security and Technology Transfer Controls, (202) 482-5534, [brian.baker@bis.doc.gov](mailto:brian.baker@bis.doc.gov).

## **SUPPLEMENTARY INFORMATION:**

### **Background**

On July 15, 2011, as part of the Administration’s ongoing Export Control Reform Initiative, BIS published a proposed rule (76 FR 41958) (“the July 15 proposed rule”) that set forth a framework for how articles the President determines, in accordance with section 38(f) of the Arms Export Control Act (AECA) (22 U.S.C. 2778(f)), would no longer warrant control on the United States Munitions List (USML) instead would be controlled on the Commerce Control List (CCL).

BIS also published a proposed rule (76 FR 68675, November 7, 2011), primarily dealing with aircraft and related items (“the November 7 proposed rule”) that made additions and modifications to some of the provisions of the July 15 proposed rule.

Following the structure of the July 15 and November 7 proposed rules, this proposed rule describes BIS’s proposal for controlling under the EAR’s CCL certain military electronic equipment and related articles now controlled by the ITAR’s USML Category XI. This proposed rule also would specifically implement in U.S. export control regulations Category ML20 Munitions List of the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies (Wassenaar Arrangement Munitions List or WAML), which pertains to certain cryogenic and superconducting equipment. These items are currently controlled by “catch all” provisions of the ITAR’s USML Categories VI, VII, VIII, and XV. Finally, this proposed rule would correct two ECCNs in CCL Category 7 to apply the missile technology reason for control only to items that are on the MTCR Annex.

The changes described in this proposed rule and the State Department’s proposed amendment to Category XI of the USML are based on a review of Category XI by the Defense Department, which worked with the Departments of State and Commerce in preparing the proposed amendments. The review was focused on identifying the types of articles that are now controlled by USML Category XI that are either (i) inherently military and otherwise warrant control on the USML or (ii) if it is of a type common to non-military electronic equipment applications, possess parameters or characteristics that provide a critical military or intelligence advantage to the United States, and that are almost exclusively available from the United States. If an article

satisfied one or both of those criteria, the article remained on the USML. If an article did not satisfy either criterion but was nonetheless a type of article that is, as a result of differences in form and fit, “specially designed” for military applications or for the intelligence applications described in proposed ECCN 3A611.b, it was identified in the new ECCNs proposed in this notice. The licensing requirements and other EAR-specific controls for such items described in this notice would enhance national security by permitting the U.S. Government to focus its resources on controlling, monitoring, investigating, analyzing, and, if need be, prohibiting exports and reexports of more significant items to destinations, end uses, and end users of greater concern than NATO allies and other multi-regime partners.

The Defense Department also reviewed WAML Category ML20, which describes certain cryogenic and superconducting items. These items are not positively listed on the USML, but are nonetheless controlled as non-specific parts, components, accessories of and attachments to items controlled under USML Categories VI, VII, VIII and XV. The Department of Defense concluded that the Category ML20 items are not in production and, even if they were, they would not necessarily provide the United States with a significant military or intelligence advantage warranting control under the ITAR. In addition, the Departments of Commerce and State have not identified evidence of trade in such items. Despite the lack of evidence of production or trade, this proposed rule would list WAML Category ML20 items on the CCL. Such listing is necessary because several State Department proposed rules would, in accordance with the Administration’s Export Control Reform Initiative, remove non-specific parts, components, accessories, and attachments from the USML, and, unless added to the Commerce Control List, WAML Category ML20 items would no longer be on any U.S. export control list.

Pursuant to section 38(f) of the AECA, the President is obligated to review the USML “to determine what items, if any, no longer warrant export controls under” the AECA. The President must report the results of the review to Congress and wait 30 days before removing any such items from the USML. The report must “describe the nature of any controls to be imposed on that item under any other provision of law.” 22 U.S.C. 2778(f)(1).

In the July 15 proposed rule, BIS proposed creating a series of new ECCNs to control items that would be removed from the USML and items currently on the CCL that are also on the Wassenaar Arrangement Munitions List. The proposed rule referred to this series as the “600 series” because the third character in each of the new ECCNs would be a “6.” The first two characters of the 600 series ECCNs serve the same function as any other ECCN as described in § 738.2 of the EAR. The first character is a digit in the range 0 through 9 that identifies the Category on the CCL in which the ECCN is located. The second character is a letter in the range A through E that identifies the product group within a CCL Category. In the 600 series, the third character is the number 6. With few exceptions, the final two characters identify the WAML category that covers items that are the same or similar to items in a particular 600 series ECCN. The ECCNs that would be created or revised by this proposed rule are described more fully below.

BIS will publish additional *Federal Register* notices containing proposed amendments to the CCL that will describe proposed controls for additional categories of articles the President determines no longer warrant control under the USML. The State Department will publish

concurrently proposed amendments to the USML that correspond to the BIS notices. BIS will also publish proposed rules to further align the CCL with the WAML and the Missile Technology Control Regime Equipment, Software and Technology Annex.

The revisions proposed in this rule are part of Commerce's retrospective plan under EO 13563 completed in August 2011. Commerce's full plan can be accessed at:

<http://open.commerce.gov/news/2011/08/23/commerce-plan-retrospective-analysis-existing-rules>.

#### **Need to Avoid Ambiguous Classifications or Inadvertent License Requirements.**

BIS recognizes that because electronics frequently are installed in some other commodity, they are particularly susceptible to ambiguous classification or classification under multiple entries on the CCL. For example, a given electronic device might also be viewed as a part for an aircraft, radar, computer, laser, or some other article. How the device is viewed might affect the classification on the CCL, which could, in turn affect license requirements or licensing policy. BIS's intent is that the new ECCNs in this proposed rule would not increase the number of destinations to which a license is required, alter the policy under which license application are reviewed or create any apparent instances of an item that is subject to the EAR being covered by more than one ECCN. Parties who believe that they can identify instances where the effect of the proposed rule would be contrary to this intent are encouraged to point out those instances in a public comment on this proposed rule.

## **Detailed Description of Changes Proposed by This Rule.**

### *New 3X611 Series of ECCNs.*

Proposed new ECCNs 3A611, 3B611, 3D611, and 3E611 would control military electronics and related test, inspection, and production equipment and software and technology currently controlled by USML Category XI that the President determines no longer warrant control on the USML. To the extent that they are not enumerated on the proposed revisions to Category XI, these proposed new ECCNs would also control computers, telecommunications equipment, radar “specially designed” for military use, parts, components, accessories, and attachments “specially designed” therefor, and related software and technology. This structure aligns with the current USML Category XI and ML11, which include within the scope of “electronics” such items as computers, telecommunications equipment, and radar. BIS believes that it will be easier to include such items within the scope of the proposed new 600 series that corresponds to USML Category XI rather than creating new 600 series ECCNs in CCL Categories 4 (computers), 5 (telecommunications), and 6 (radar). BIS, however, proposes including cross references in CCL Categories 4, 5, and 6 to alert readers that ECCN 3A611 may control such items.

The proposed 3X611 series, except for 3X611.y, would be controlled for national security (NS Column 1 or NS1), regional stability (RS Column 1 or RS1), antiterrorism (AT Column 1 or AT1) and United Nations embargo (UN) reasons. ECCNs 3X611.y would only be controlled for AT1 reasons (ECCN 3B611 would not have a .y paragraph). Each ECCN in this 3X611 series is described more specifically below.



New ECCN 3A611.

Proposed ECCN 3A611 paragraph .a would control electronic “equipment,” “end items,” and “systems” “specially designed” for military use that are not enumerated in either a USML category or another “600 series” ECCN.

Paragraph .b would be reserved. The corresponding USML Category is XI(b), which will continue to be a catch-all control and will contain the following clarified version of the current Category XI(b): “Electronic systems or equipment “specially designed” for the collection, surveillance, monitoring, or exploitation of the electromagnetic spectrum (regardless of transmission medium), for intelligence or security purposes or for counteracting such activities.” State’s proposed revision to Category XI(b) will contain references to certain types of equipment and systems that are *per se* within the scope of the revised Category XI(b). BIS encourages the public to comment on whether this approach creates any confusion regarding the jurisdictional status of any items that are commonly used in normal commercial, non-intelligence, or non-security use, including those controlled under ECCN 5A980 (“Devices primarily useful for the surreptitious interception of wire, oral, or electronic communications.”)

Paragraph .c would control microwave monolithic integrated circuit (MMIC) power amplifiers based in general on four parameters: rated operating frequency; peak saturated power output, fractional bandwidth and power added efficiency. This paragraph covers MMIC power amplifiers with rated operating frequencies ranging from 2.7 GHz through 75 GHz in six

subparagraphs ranging from the lowest to the highest operating frequency ranges, with a gap for MMIC power amplifiers rated for an operation frequency range of 31.8 GHz up to and including 37.5 GHz, which are covered by ECCN 3A001.b.2.d. The threshold values of the other three parameters decline as the operating frequency range increases. For the lowest operating frequency range (2.7 GHz through 3.2 GHz), the peak saturated power output parameter is one of three alternative power measurements that define the threshold for inclusion within paragraph .c. The other two are: 1) average power output and fractional bandwidth; and 2) pulse power output and 3) duty cycle.

Paragraph .d would control discrete radio frequency transistors in five graduated steps over the operating frequency range of 2.7 GHz through 75 GHz, with a gap for transistors with an operating frequency range exceeding 31.8 GHz up to and including 37.5 GHz, which are covered by ECCN 3A001.b.3.c. This paragraph uses the same parameters that as are used to identify MMIC power amplifiers in paragraph .c and, as with MMIC power amplifiers, the threshold values for the other parameters decline as the operating frequency increases.

Paragraph .e would control high frequency (HF) surface wave radar capable of “tracking” surface targets on oceans.

Paragraph .f would control microelectronic devices and printed circuit boards that are certified to be a ‘trusted device’ from a defense microelectronics activity (DMEA) accredited supplier.

Each of these new ECCNs describes electronic items that BIS understands to be inherently military or otherwise exclusively designed and manufactured for military use. BIS encourages the public to test this understanding and identify items, if any, that fall within the scope of these new ECCNs that are in normal commercial use. If so, the comments should provide details on such commercial applications. In particular, BIS asks the public to comment on whether the controls in proposed new paragraphs 3A611.c (MMICs) and 3A611.d (discrete radio frequency transistors) are sufficiently limited to those not now or likely to be in normal commercial use by U.S. or foreign telecommunications or other non-military applications. The basis for this request is that the current USML Category XI(c) does not now control any electronic parts, components, accessories, attachments, or associated equipment “in normal commercial use” even if they were “specifically designed or modified for use with the equipment” controlled in USML categories XI(a) or XI(b), which are, in essence, electronic equipment “specifically designed, modified, or configured for military application.” One of the goals of the reform effort is to ensure that items that are currently EAR controlled are not unintentionally made ITAR or “600 series” controlled, through the creation of more positive lists. This objective, however, does not preclude the possibility of the Administration intentionally making ITAR or “600 series” controlled items that are today subject to the other parts of the EAR.

Paragraphs .g through .w would be reserved.

Paragraph .x would control “parts,” “components,” “accessories” and “attachments” that are “specially designed” for a commodity controlled by ECCN 3A611 or for an article controlled by USML Category XI, and not enumerated in a USML Category.

A note is proposed for ECCN 3A611.x clarifying that electronic parts, components, accessories, and attachments that are “specially designed” for military use that are not enumerated in any USML Category but are within the scope of a “600 series” ECCN are controlled by that “600 series” ECCN. Thus, for example, electronic components not enumerated on the USML that are “specially designed” for a military aircraft controlled by USML Category VIII or ECCN 9A610 would be controlled by ECCN 9A610.x. Similarly, electronic components not enumerated on the USML that are “specially designed” for a military vehicle controlled by USML Category VII or ECCN 0A606 would be controlled by ECCN 0A606.x. The purpose of this note and the limitations in ECCN 3A611.x is to prevent any overlap of controls over electronics specially designed for particular types of items described in other 600 series ECCNs (which would not be controlled by 3A611.x) and all other electronic parts, components, accessories, and attachments specially designed for military electronics that are not enumerated on the USML (which would be controlled by ECCN 3A611.x).

A second note proposed for ECCN 3A611.x specifies that ECCN 3A611.x controls parts and components “specially designed” for underwater sensors or projectors controlled by proposed USML Category XI(c)(12) containing single-crystal lead magnesium niobate lead titanate (PMN-PT) based piezoelectrics.

ECCN 3A611 also would contain a paragraph .y for items of little or no military significance that would be controlled only for AT1 reasons.

New ECCN 3B611.

Proposed ECCN 3B611 would impose controls on test, inspection, and production end items and equipment “specially designed” for items controlled in ECCN 3A611 or USML Category XI that are not enumerated in USML XI or controlled by a “600 series” ECCN under paragraph .a and for “parts,” “components,” “accessories” and “attachments” that are “specially designed” for such test, inspection and production end items and equipment that are not enumerated on the USML or controlled by another “600 series” ECCN under paragraph .x.

New ECCN 3D611.

Proposed ECCN 3D611 would impose controls on software “specially designed” for the “development,” “production,” operation, or maintenance of commodities controlled by 3A611 or 3B611 other than software for 3A611.y or 3B611.y.

New ECCN 3E611.

Proposed ECCN 3E611 would impose controls on “technology” “required” for the “development,” “production,” operation, installation, maintenance, repair, or overhaul of

commodities or software controlled by ECCN 3A611, 3B611 or 3D611 (except technology for 3A611.y, 3B611.y and 3D611.y), which would be controlled for AT1 reasons only.

Revisions to ECCNs 3A101 and 4A003.

The analog-to-digital converters described in the proposed revision to 3A101.a would become subject to the EAR. Currently ECCN 3A101 refers readers to the ITAR for analog-to-digital converters described in paragraph .a. These converters are and would continue to be controlled for MT reasons because they are identified on the Missile Technology Control Regime Annex. Placing such items in this ECCN rather than the new 3A611 will make it easier to identify, classify, and control such items. Consequently, this proposed rule adds analog-to-digital converters useable in “missiles” and having any of the characteristics described in proposed 3A101.a.1, a.2, a.3, or a.4.

In addition, adding the new text in 3A101.a.4 for electrical input type analog-to-digital converter printed circuit boards or modules requires that this proposed rule amend ECCN 4A003 to add an MT control for items classified under ECCN 4A003.e when meeting or exceeding the parameters described in ECCN 3A101.a.4. This amendment is necessary as the MT items in new paragraph 3A101.a.4 are a subset of the items in paragraph 4A003.e.

Revisions to ECCN 5A001.

This proposed rule revises the Related Controls paragraph in ECCN 5A001 to provide more detailed references to telecommunications equipment subject to the ITAR under USML Categories XI and XV, while maintaining references to ECCNs 5A101, 5A980, and 5A991.

*New Cross Reference ECCNs.*

Three new cross reference ECCNs would be created to alert readers that computers, telecommunications equipment, and radar – and parts, components, accessories and attachments “specially designed” therefor – are controlled by ECCN 3A611 if they are specially designed for military use. These cross references are intended to reduce the likelihood of confusion that might otherwise arise because computers, telecommunications equipment, and radar generally are in CCL Categories 4, 5 (Part 1) and 6, respectively. The new cross reference ECCNs and the Categories in which they would appear are: 4A611, Category 4; 5A611, Category 5, Part 1; and 6A611, Category 6.

*Corrections to ECCNs 7A006 and 7D101.*

This proposed rule would correct the reasons for control paragraph of ECCN 7A006 to state that the missile technology reason for control applies to those items covered by ECCN 7A006 that also meet or exceed the parameters of ECCN 7A106. ECCN 7A006 now applies the missile technology reason for control to a range of airborne altimeters that extends beyond the range of

altimeters that are on the MTCR annex. BIS's practice is to apply the missile technology reason for control only to items on that annex. This proposed change would make ECCN 7A006 conform to that practice. Similarly, this proposed rule would add the phrase "for missile technology reasons" to the heading of ECCN 7D101. ECCN 7D101 applies the missile technology reason for control to software for a range of commodity ECCNs. Not all of those commodities are controlled for missile technology reasons. The text proposed here would limit the scope of missile technology controls in ECCN 7A106 to commodities on the MTCR Annex and that of ECCN 7D101 to software for commodities on the MTCR Annex.

*New 9X620 series of ECCNs.*

Proposed ECCNs 9A620, 9B620, 9D620, and 9E620 would apply NS1, RS1, AT1 and UN reasons for control to cryogenic and superconducting equipment described in Category ML20 of the Wassenaar Arrangement Munitions List and to test, inspection and production equipment, software and technology therefor. Category ML20 covers cryogenic and superconducting equipment that is "specially designed" to be installed in a vehicle for military ground, marine, airborne, or space applications. BIS believes that such equipment is used in experimental or developmental vehicle propulsion systems that employ superconducting components and cryogenic equipment to cool those components to temperatures at which they superconduct. BIS has not identified evidence of trade in such items. To the extent that exports do exist, the items would be subject to the license requirements of the USML Category that controls the vehicle into which the equipment would be installed, *i.e.*, Category VI, surface vessels; Category VII, ground



vehicles; Category VIII, aircraft; and Category XV, spacecraft. BIS proposes to place this cryogenic and superconducting equipment, its related test, inspection and production equipment, and its related software and technology into a single set of 600 series ECCNs ending with the digits “20” to correspond to the relevant Wassenaar Arrangement Munitions List Category. This approach would further the administration’s Export Control Reform Initiative goal of aligning U.S. controls with multilateral controls wherever feasible. Each ECCN in this series is described more specifically below.

New ECCN 9A620.

Paragraph a. would control equipment “specially designed” to be installed in a vehicle for military ground, marine, airborne, or space applications, capable of operating while in motion and of producing or maintaining temperatures below 103 K (-170°C). Paragraph b. would control “superconductive” electrical equipment (rotating machinery and transformers) “specially designed” to be installed in a vehicle for military ground, marine, airborne, or space applications, and capable of operating while in motion. Paragraph x. would control parts, components, accessories and attachments that were “specially designed” for a commodity controlled by ECCN 9A620.

New ECCN 9B620.

Proposed ECCN 9B620 would control test, inspection, and production end items and equipment “specially designed” for items controlled in proposed ECCN 9A620.

New ECCN 9D620.

Proposed ECCN 9D620 would control software “specially designed” for the “development,” “production,” operation, or maintenance of commodities controlled by ECCNs 9A620 or 9B620.

New ECCN 9E620.

Proposed ECCN 9E620 would control a “technology” “required” for the “development,” “production,” operation, installation, maintenance, repair, or overhaul of commodities or software controlled by ECCNs 9A620, 9B620 or 9D620.

Proposed New ECCNs and License Exception STA.

One of the objectives of the Export Control Reform effort is to align the jurisdictional status of technology and software with the items to which they relate. Thus, for example, all technical data and software directly related to a defense article, *i.e.*, an item identified on the ITAR’s USML, will also be ITAR controlled. All technology, including technical data, and software for the production, development, or other aspects of an item on the EAR’s CCL will be subject to the EAR. Nevertheless, some types of software and technology are more significant than the commodities that are developed or produced from or that utilize such software or technology. In recognition of that fact, this proposed rule would preclude use of License Exception STA for software and technology (other than build-to-print technology) for (1) Helix traveling wave tubes

(TWTs); (2) Transmit/receive or transmit modules; (3) Microwave monolithic integrated circuits (MMIC)s; and (4) Discrete radio frequency transistors that would be controlled by ECCN 3A611.

### **Request for Comments**

All comments must be in writing and submitted via one or more of the methods listed under the “ADDRESSES” caption to this notice. All comments (including any personal identifiable information) will be available for public inspection and copying. Those wishing to comment anonymously may do so by submitting their comment via regulations.gov and leaving the fields for identifying information blank.

### **Effects of This Proposed Rule**

#### *Use of License Exceptions*

Military electronic equipment, certain cryogenic and superconducting equipment, and parts, components, and test, inspection, and production equipment therefor currently on the USML that this rule would place on the CCL would become eligible for several license exceptions, including STA, which would be available for exports to certain government agencies of NATO and other multi-regime close allies. The exchange of information and statements required under STA is

substantially less burdensome than are the license application requirements currently required under the ITAR, as discussed in more detail in the “Regulatory Requirements” section of this proposed rule. This proposed rule does not move any items currently on the CCL to a 600 series ECCN; therefore, it would not narrow the scope of license exception eligibility for any items currently on the CCL.

*Alignment with the Wassenaar Arrangement Munitions List.*

The Administration has stated since the beginning of the Export Control Reform Initiative that the reforms will be consistent with the obligations of the United States to the multilateral export control regimes. Accordingly, the Administration will, in this and subsequent proposed rules, exercise its national discretion to implement, clarify, and, to the extent feasible, align its controls with those of the regimes. This proposed rule would maintain the alignment that exists between the USML, in which military electronics are controlled under Category XI, and the WAML, in which military electronic equipment is controlled under ML11 and would be controlled by ECCN 3A611 in this proposed rule. Similarly, 3B611 aligns with WAML 18, which, *inter alia*, controls “specially designed or modified ‘production’ equipment for the ‘production’ of products specified by the Munitions List, and specially designed components therefor.”

This proposed rule would align cryogenic and superconducting equipment currently controlled in Categories VI, VII, VIII, and XV with Wassenaar Arrangement Munitions List Category ML20 by controlling them under ECCN 9A620. As with other 600 series ECCNs, this rule follows the existing CCL numbering pattern for test, inspection and production equipment (3B611 and

9B620), software (3D611 and 9D620) and technology (3E611 and 9E620) rather than strictly following the Wassenaar Arrangement Munitions List pattern of placing production equipment, software and technology for munitions list items in categories ML18, ML21 and ML22, respectively. BIS believes that including the ECCNs for test, inspection and production equipment, software, and technology in the same category as the items to which they relate results in an easier to understand CCL than would separate categories.

Although the Export Administration Act expired on August 20, 2001, the President, through Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as extended by the Notice of August 15, 2012, 77 FR 49699 (August 16, 2012), has continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act. BIS continues to carry out the provisions of the Export Administration Act, as appropriate and to the extent permitted by law, pursuant to Executive Order 13222.

### **Rulemaking requirements**

1. Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distribute impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated a “significant regulatory action,” although not

economically significant, under section 3(f) of Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget (OMB).

2. Notwithstanding any other provision of law, no person is required to respond to, nor is subject to a penalty for failure to comply with, a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid OMB control number. This proposed rule would affect two approved collections: Simplified Network Application Processing System (control number 0694-0088), which includes, among other things, license applications, and License Exceptions and Exclusions (0694-0137).

As stated in the proposed rule published at 76 FR 41958 (July 15, 2011), BIS believed that the combined effect of all rules to be published adding items to the EAR that would be removed from the ITAR as part of the administration's Export Control Reform Initiative would increase the number of license applications to be submitted by approximately 16,000 annually. As the review of the USML has progressed, the interagency group has gained more specific information about the number of items that would come under BIS jurisdiction whether those items would be eligible for export under license exception. As of June 21, 2012, BIS believes the increase in license applications may be 30,000 annually, resulting in an increase in burden hours of 8,500 (30,000 transactions at 17 minutes each) under control number 0694-0088.

Military electronic equipment, certain cryogenic and superconducting equipment, related test, inspection and production equipment, "parts," "components," "accessories" and "attachments,"

“software” and “technology” formerly on the USML would become eligible for License Exception STA under this rule. BIS believes that the increased use of License Exception STA resulting from the combined effect of all rules to be published adding items to the EAR that would be removed from the ITAR as part of the administration’s Export Control Reform Initiative would increase the burden associated with control number 0694–0137 by about 23,858 hours (20,450 transactions @ 1 hour and 10 minutes each).

BIS expects that this increase in burden would be more than offset by a reduction in burden hours associated with approved collections related to the ITAR. The largest impact of the proposed rule would likely apply to exporters of replacement parts for military electronic equipment that has been approved under the ITAR for export to allies and regime partners. Because, with few exceptions, the ITAR allows exemptions from license requirements only for exports to Canada, most exports of such parts, even when destined to NATO and other close allies, require specific State Department authorization. Under the EAR, as proposed in this notice, such parts would become eligible for export to NATO and other multi-regime allies under License Exception STA. Use of License Exception STA imposes a paperwork and compliance burden because, for example, exporters must furnish information about the item being exported to the consignee and obtain from the consignee an acknowledgement and commitment to comply with the EAR. However, the Administration understands that complying with the burdens of STA is likely less burdensome than applying for licenses. For example, under License Exception STA, a single consignee statement can apply to an unlimited number of products, need not have an expiration date, and need not be submitted to the government in advance for approval. Suppliers with regular customers can tailor a single statement and assurance to match their

business relationship rather than applying repeatedly for licenses with every purchase order to supply reliable customers in countries that are close allies or members of export control regimes or both.

Even in situations in which a license would be required under the EAR, the burden is likely to be reduced compared to the license requirement of the ITAR. In particular, license applications for exports of technology controlled by ECCN 3E611 are likely to be less complex and burdensome than the authorizations required to export ITAR-controlled technology, *i.e.*, Manufacturing License Agreements and Technical Assistance Agreements.

3. This rule does not contain policies with Federalism implications as that term is defined under E.O. 13132.

4. The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.*, generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to the notice and comment rulemaking requirements under the Administrative Procedure Act (5 U.S.C. 553) or any other statute, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Under section 605(b) of the RFA, however, if the head of an agency certifies that a rule will not have a significant impact on a substantial number of small entities, the statute does not require the agency to prepare a regulatory flexibility analysis. Pursuant to section 605(b), the Chief Counsel for Regulation, Department of Commerce, submitted a memorandum to the Chief Counsel for Advocacy, Small Business Administration,



certifying that this proposed rule will not have a significant impact on a substantial number of small entities.

*Number of Small Entities.*

The Bureau of Industry and Security (BIS) does not collect data on the size of entities that apply for and are issued export licenses. Although BIS is unable to estimate the exact number of small entities that would be affected by this rule, it acknowledges that this rule would affect some unknown number.

*Economic Impact.*

This proposed rule is part of the Administration's Export Control Reform Initiative. Under that initiative, the United States Munitions List (22 CFR part 121) (USML) would be revised to be a "positive" list, *i.e.*, a list that does not use generic, catch-all controls on any part, component, accessory, attachment, or end item that was in any way specifically modified for a defense article, regardless of the article's military or intelligence significance or non-military applications. At the same time, articles that are determined to no longer warrant control on the USML would become controlled on the Commerce Control List (CCL). Such items, along with certain military items that currently are on the CCL, will be identified in specific Export Control Classification Numbers (ECCNs) known as the "600 series" ECCNs. In practice, the greatest impact of this rule on small entities would likely be reduced administrative costs and reduced delay for exports of items that are now on the USML but would become subject to the EAR.

This rule focuses on Category XI articles, which are, in essence, military and intelligence-related electronic equipment, “parts,” “components,” and “accessories” and “attachments” therefor; test, inspection and production equipment for military electronic equipment and “parts,” “components” and “accessories and attachments” therefor, and related software and technology and on certain laser and radar altimeters that currently are controlled under Category IV of the USML.

Electronic equipment related to certain military or intelligence-gathering functions would remain on the USML. However, parts, components, accessories and attachments for that equipment would be included on the CCL unless expressly enumerated on the USML. Such parts and components are more likely to be produced by small businesses than complete items of electronic equipment, which would in many cases become subject to the EAR. Moreover, officials of the Department of State have informed BIS that license applications for such parts and components are a high percentage of the license applications for USML articles review by that department. One of the purposes of this proposed change is to ensure the “right sizing” of controls on military electronics. The current USML Category XI is little more than a “catch-all” paragraph that controls all equipment specifically designed or modified for military use and all parts, components, accessories specifically designed or modified for such equipment, except those “in normal commercial use,” regardless of the age, sensitivity, availability, or military significance of the electronics. The proposed changes in this rule will not result in the decontrol of such items, but will allow for reduction in administrative and collateral regulatory burdens by,

for example, allowing for the use of License Exception STA for exports when the ultimate end user is in a NATO and other multi-regime allied country.

Thus, changing the jurisdictional status of Category XI articles would reduce the burden on small entities (and other entities as well) through: elimination of some license requirements, greater availability of license exceptions, simplification of license application procedures, and reduction (or elimination) of registration fees. In addition, parts and components controlled under the ITAR remain under ITAR control when incorporated into foreign-made items, regardless of the significance or insignificance of the item, discouraging foreign buyers from incorporating such U.S. content. The availability of *de minimis* treatment under the EAR may reduce the incentive for foreign manufacturers to avoid purchasing U.S.-origin parts and components.

Exporters and reexporters of the Category XI articles, particularly parts and components, that would be placed on the CCL by this rule would need fewer licenses because their transactions would become eligible for license exceptions that apply to shipments to United States Government agencies, shipments valued at less than \$1,500, parts and components being exported for use as replacement parts, temporary exports, and License Exception Strategic Trade Authorization (STA). License Exceptions under the EAR would allow suppliers to send routine replacement parts and low level parts to NATO and other close allies and export control regime partners for use by those governments and for use by contractors building equipment for those governments or for the U.S. government without having to obtain export licenses. Under License Exception STA, the exporter would need to furnish information about the item being

exported to the consignee and obtain a statement from the consignee that, among other things, would commit the consignee to comply with the EAR and other applicable U.S. laws.

Because such statements and obligations can apply to an unlimited number of transactions and have no expiration date, they would impose a net reduction in burden on transactions that the government routinely approves through the license application process that the License Exception STA statements would replace.

Even for exports and reexports in which a license would be required, the process would be simpler and less costly under the EAR. When a USML Category XI article or Category IV altimeter moved to the CCL, the number of destinations for which a license is required would remain unchanged. However, the burden on the license applicant would decrease because the licensing procedure for CCL items is simpler and more flexible than the license procedure for USML articles.

Under the USML licensing procedure, an applicant must include a purchase order or contract with its application. There is no such requirement under the CCL licensing procedure. This difference gives the CCL applicant at least two advantages. First, the applicant has a way of determining whether the U.S. Government will authorize the transaction before it enters into potentially lengthy, complex, and expensive sales presentations or contract negotiations. Under the USML procedure, the applicant will need to caveat all sales presentations with a reference to the need for government approval and is more likely to have to engage in substantial effort and expense only to find that the government will reject the application. Second, a CCL license

applicant need not limit its application to the quantity or value of one purchase order or contract. It may apply for a license to cover all of its expected exports or reexports to a particular consignee over the life of a license (normally two years, but may be longer if circumstances warrant a longer period), reducing the total number of licenses for which the applicant must apply.

In addition, many applicants exporting or reexporting items that this rule would transfer from the USML to the CCL would realize cost savings through the elimination of some or all registration fees currently assessed under the USML's licensing procedure. Currently, USML applicants must pay to use the USML licensing procedure even if they never actually are authorized to export. Registration fees for manufacturers and exporters of articles on the USML start at \$2,250 per year, increase to \$2,750 for organizations applying for one to ten licenses per year and further increases to \$2,750 plus \$250 per license application (subject to a maximum of three percent of total application value) for those who need to apply for more than ten licenses per year. There are no registration or application processing fees for applications to export items listed on the CCL. Once the Category XI articles and Category IV altimeters that are the subject to this rulemaking are added to the CCL and removed from the USML, entities currently applying for licenses from the Department of State would find their registration fees reduced if the number of USML licenses those entities need declines. If an entity's entire product line is moved to the CCL, then its ITAR registration and registration fee requirement would be eliminated.

*De minimis* treatment under the EAR would become available for all items that this rule would transfer from the USML to the CCL. Items subject to the ITAR remain subject to the ITAR when they are incorporated abroad into a foreign-made product regardless of the percentage of U.S. content in that foreign-made product. Foreign-made products that incorporate items that this rule would move to the CCL would be subject to the EAR only if their total controlled U.S.-origin content exceeded 10 percent. Because including small amounts of U.S.-origin content would not subject foreign-made products to the EAR, foreign manufacturers would have less incentive to avoid such U.S.-origin parts and components, a development that potentially would mean greater sales for U.S. suppliers, including small entities.

This rule also contains proposed EAR controls on cryogenic and superconducting equipment “specially designed” to be installed in a vehicle for military ground, marine, airborne, or space applications, and related test, inspection and production equipment, software and technology. BIS believes that these items are largely experimental or developmental and has not identified evidence of trade in such items. Therefore, removing them from the USML and adding them to the CCL is unlikely to have a significant impact on large or small entities.

### Conclusion.

BIS is unable to determine the precise number of small entities that would be affected by this rule. Based on the facts and conclusions set forth above, BIS believes that any burdens imposed by this rule would be offset by the reduction in the number of items that would require a license, increased opportunities for use of license exceptions for exports to certain countries, simpler

export license applications, reduced or eliminated registration fees and application of a *de minimis* threshold for foreign-made items incorporating U.S.-origin parts and components, which would reduce the incentive for foreign buyers to design out or avoid U.S.-origin content. For these reasons, the Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule, if adopted in final form, would not have a significant economic impact on a substantial number of small entities.

#### **List of Subjects in 15 CFR Part 774**

Exports, Reporting and recordkeeping requirements

Accordingly, part 774 of the Export Administration Regulations (15 CFR Parts 730-774) is proposed to be amended as follows:

#### **PART 774 - [AMENDED]**

1. The authority citation for 15 CFR part 774 continues to read as follows:

**Authority:** 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 22 U.S.C. 287c, 22 U.S.C. 3201 *et seq.*, 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 15 U.S.C. 1824a; 50 U.S.C. app. 5; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O.

13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 15, 2012, 77 FR 49699 (August 16, 2012).

2. In Supplement No. 1 to Part 774, Category 3, amend Export Control Classification Number (ECCN) 3A101 by:

- a. Revising the Related Controls paragraph in the List of Items Controlled section; and
- b. Revising paragraph a. in the Items paragraph in the List of Items Controlled section, to read as follows:

**Supplement No. 1 to Part 774 – The Commerce Control List**

\* \* \* \* \*

**3A101 Electronic equipment, devices and components, other than those controlled by 3A001, as follows (see List of Items Controlled).**

\* \* \* \* \*

**List of Items Controlled**



\* \* \* \* \*

*Related Controls:* See also ECCN 4A003.e for controls on electrical input type analog-to-digital converter printed circuit boards or modules

\* \* \* \* \*

*Items:*

- a. Analog-to-digital converters useable in “missiles,” and having any of the following characteristics:
  - a.1. “Specially designed” to meet military specifications for ruggedized equipment;
  - a.2. Analog-to-digital converter microcircuits which are radiation-hardened;
  - a.3. Analog-to-digital converter microcircuits having all of the following characteristics:
    - a.3.a. Having a quantization corresponding to 8 bits or more when coded in the binary system;
    - a.3.b. Rated for operation in the temperature range from -54°C to above +125°C; and

a.3.c. Hermetically sealed; or

a.4. Electrical input type analog-to-digital converter printed circuit boards or modules having all of the following characteristics:

a.4.a. Having a quantization corresponding to 8 bits or more when coded in the binary system;

a.4.b. Rated for operation in the temperature range from below -45°C to above +55°C;  
and

a.4.c. Incorporating microcircuits identified in 3A101.a.2 or a.3;

\* \* \* \* \*

3. In Supplement No. 1 to Part 774, between the entries for ECCNs 3A292 and 3A980, add new entry for ECCN 3A611 to read as follows:

**3A611 Military electronics, as follows (see list of items controlled):**

*Reason for Control:* NS, RS, AT, UN

<b>Control(s)</b>	<b>Country chart</b>
NS applies to entire entry except 3A611.y	NS Column 1
RS applies to entire entry except 3A611.y	RS Column 1
AT applies to entire entry	AT Column 1
UN applies to entire entry except 3A611.y	See § 746.1(b) for UN controls

### **License Exceptions**

*LVS:* \$1500 (except for ECCN 3A611.c)

*GBS:* N/A

*CIV:* N/A

*STA:* Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2)) of the EAR may not be used for any item in 3A611.

### **List of Items Controlled**

*Unit:* End items in number; parts, component, accessories and attachments in \$ value

*Related Controls:* (1) Electronic items that are enumerated in USML Category XI or other USML categories, and technical data (including software) directly related thereto, are subject to the ITAR. (2) Electronic items “specially designed” for military use that are not controlled in

any USML category but are within the scope of another “600 series” ECCN are controlled by that “600 series” ECCN. Thus, ECCN 3A611 controls only electronic items “specially designed” for a military use that are not otherwise within the scope of a USML Category or “600 series” ECCN other than ECCN 3A611. For example, electronic components not enumerated on the USML or another 600 series entry that are “specially designed” for a military aircraft controlled by USML Category VIII or ECCN 9A610 are controlled by the catch-all control in ECCN 9A610.x. Electronic components not enumerated on the USML or another 600 series entry that are “specially designed” for a military vehicle controlled by USML Category VII or ECCN 0A606 are controlled by ECCN 0A606.x. Electronic components not enumerated on the USML that are “specially designed” for a missile controlled by USML Category IV are controlled by ECCN 0A604.

*Related Definitions:* N/A

*Items:*

- a. Electronic “equipment,” “end items,” and “systems” “specially designed” for military use that are not enumerated in either a USML category or another “600 series” ECCN.

Note: ECCN 3A611.a includes any radar, telecommunications, or computer equipment, end items, or systems “specially designed” for military use that are not enumerated in any USML category or controlled by a “600 series” ECCN.

- b. [Reserved]

c. Microwave “monolithic integrated circuits” (MMIC) power amplifiers having any of the following:

1. Rated for operation at frequencies of 2.7 GHz up to and including 3.2 GHz, having a power added efficiency of 30% or greater, and having any of the following:

- a. An average output power greater than 15 W (41.7 dBm) with a “fractional bandwidth” greater than 15%;
- b. A pulse power output greater than 75 W (48.75 dBm) and a duty cycle of 20% or more; or
- c. A ‘peak saturated power output’ greater than 75 W (48.75 dBm);

2. Rated for operation at frequencies exceeding 3.2 GHz up to and including 6.8 GHz and with a ‘peak saturated power output greater’ than 40W (46 dBm) with a “fractional bandwidth” greater than 15% and a power added efficiency of 40% or greater;

3. Rated for operation at frequencies exceeding 6.8 GHz up to and including 16 GHz and with an ‘peak saturated power output’ greater than 10W (40 dBm) with a “fractional bandwidth” greater than 10% and a power added efficiency of 35% or greater;

4. Rated for operation at frequencies exceeding 16 GHz up to and including 31.8 GHz and with a ‘peak saturated power output’ greater than 5 W (37 dBm) with a “fractional bandwidth” greater than 10% and a power added efficiency of 30% or greater;

*Note to paragraph .c.4: See ECCN 3A001.b.2.d for MMIC power amplifiers that are rated for operation at frequencies exceeding 31.8 GHz up to and including 37.5 GHz.*

5. Rated for operation at frequencies exceeding 37.5 GHz up to and including 43.5 GHz and with a ‘peak saturated power output’ greater than 2.5 W (34dBm) with a “fractional bandwidth” greater than 10% and a power added efficiency of 15% or greater; or

6. Rated for operation at frequencies exceeding 43.5 GHz up to and including 75 GHz and with a ‘peak saturated power output’ greater than 2.0 W (33dBm) with a “fractional bandwidth” greater than 5% and a power added efficiency of 10% or greater.

*Note 1 to paragraph c: See ECCN 3A001.b.2.f for MMIC power amplifiers that are rated for operation at frequencies exceeding 75 GHz.*

*Note 2 to paragraph c: ‘Peak saturated power output’ is defined as that value where an increase in input rf power does not produce a concurrent increase in rf output power and may also be referred to as output power, saturated power output, maximum power output, peak power output, or peak envelope power output.*

d. Discrete microwave transistors having any of the following:

1. Rated for operation at frequencies of 2.7 GHz up to and including 3.2 GHz, having a power added efficiency of 30% or greater, and having any of the following:
  - a. An average output power greater than 48 W (46.8 dBm);
  - b. A pulse power output greater than 240 W (53.8 dBm) and a duty cycle of 20% or more; or
  - c. A 'peak saturated power output' greater than 240 W (53.8 dBm);
2. Rated for operation at frequencies exceeding 3.2 GHz up to and including 6.8 GHz and having a 'peak saturated power output' greater than 60W (47.8 dBm) and a power added efficiency of 45% or greater;
3. Rated for operation at frequencies exceeding 6.8 GHz up to and including 31.8 GHz and having a 'peak saturated power output' greater than 20W (43 dBm) and a power added efficiency of 35% or greater;

*Note to paragraph.d.3: See ECCN 3A001.b.3.c for discrete microwave transistors that are rated for operation at frequencies exceeding 31.8 GHz up to and including 37.5 GHz.*

4. Rated for operation at frequencies exceeding 37.5 GHz up to and including 43.5 GHz and having a 'peak saturated power output' greater than 1W (30 dBm) and a power added efficiency of 20% or greater; or

5. Rated for operation at frequencies exceeding 43.5 GHz up to and including 75 GHz and having a ‘peak saturated power output’ greater than 0.5W (27 dBm) and a power added efficiency of 15% or greater; or

*Note 1 to paragraph .d: See ECCN 3A001.b.3.e for discrete microwave transistors that are rated for operation at frequencies exceeding 75 GHz.*

*Note 2 to paragraph .d: ‘Peak saturated power output’ is defined as that value where an increase in input rf power does not produce a concurrent increase in rf output power and may also be referred to as saturated power, output power, saturated power output, maximum power output, peak power output, or peak envelope power output.*

e. High frequency (HF) surface wave radar capable of “tracking” maritime surface targets or low altitude airborne targets.

*Note: ECCN 3A611.e does not apply to systems, equipment, and assemblies “specially designed” for marine traffic control.*

f. Microelectronic devices or printed circuit boards not otherwise controlled on the USML that are certified to be a ‘trusted device’ from a defense microelectronics activity (DMEA) accredited supplier.



*Note: A “trusted device” is a device that is certified as produced or manufactured under accredited defense microelectronics activity (DMEA) procedures at a “trusted foundry,” a “trusted source,” or an “accredited supplier.” A “trusted foundry” is a semiconductor foundry that is accredited through the defense microelectronics activity (DMEA) to be a trusted source for the following services: design, foundry services, packaging, assembly, and test. A “trusted source,” or DMEA “accredited supplier,” is a source or supplier that is accredited through DMEA to be a trusted source for the following services: design, foundry services, packaging, assembly, and test. Not all devices developed or manufactured by a company that is a trusted foundry, trusted source, or accredited supplier are per se “trusted devices.” Thus, ECCN 3A001.f does not include or apply to any other device that is not a “trusted device” manufactured or exported by such companies.*

g. through w. [Reserved]

x. “Parts,” “components,” “accessories” and “attachments” that are “specially designed” for a commodity controlled by ECCN 3A611 or for an article controlled by USML Category XI, and not enumerated in a USML Category.

*Note 1 to ECCN 3A611.x: ECCN 3A611.x includes parts, components, accessories, and attachments “specially designed” for a radar, telecommunications, or computer “specially designed” for military use that are neither enumerated in any USML Category nor controlled in another “600 series” ECCN.*

*Note 2 to ECCN 3A611.x: ECCN 3A611.x controls parts and components “specially designed” for underwater sensors or projectors controlled by USML Category XI(c)(12) containing single-crystal lead magnesium niobate lead titanate (PMN-PT) based piezoelectrics.*

y. Specific “parts,” “components,” “accessories” and “attachments” “specially designed” for a commodity subject to control in this ECCN and not elsewhere specified in the CCL, as follows:

- y.1. Electric couplings
- y.2. Cathode ray tubes (CRTs)
- y.3. Electrical connectors
- y.4. Electric fans
- y.5. Rotron fans
- y.6. Electric fuses other than those specially designed for explosive detonation
- y.7. Grid vacuum tubes
- y.8. Audio headphones, earphones, handsets, and headsets
- y.9. Heat sinks
- y.10. Intercom systems
- y.11. Joy sticks
- y.12. Loudspeakers
- y.13. Mica paper capacitors
- y.14. Microphones

- y.15. Potentiometers
- y.16. Rheostats
- y.17. Electric connector backshells
- y.18. Solenoids
- y.19. Speakers
- y.20. Electric switches other than RF, pressure, diplexer, duplexer, circulator, or isolator switches
- y.21. Trackballs
- y.22. Electric transformers
- y.23. Vacuum tubes other than TWTs, klystron tubes, or tubes specially designed for articles enumerated in USML Category XII
- y.24. Waveguide

4. In Supplement No. 1 to Part 774, between the entries for ECCNs 3B002 and 3B991, add new entry for ECCN 3B611 to read as follows:

**3B611 Test, inspection, and production commodities for military electronics, as follows (see List of Items Controlled).**

**License Requirements**

*Reason for Control:* NS, RS, AT, UN

<b>Control(s)</b>	<b>Country chart</b>
NS applies to entire entry	NS Column 1
RS applies to entire entry	RS Column 1
AT applies to entire entry	AT Column 1
UN applies to entire entry	See § 746.1(b) for UN controls

### **License Exceptions**

*LVS:* \$1500

*GBS:* N/A

*CIV:* N/A

*STA:* Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2)) of the EAR may not be used for any item in 3B611.

### **List of Items Controlled**

*Unit:* N/A

*Related Controls:* N/A

*Related Definitions:* N/A

*Items:*

a. Test, inspection, and production end items and equipment “specially designed” for items controlled in ECCN 3A611 or USML Category XI that are not enumerated in USML XI or controlled by another “600 series” ECCN.

b. through w. [Reserved]

x. “Parts,” “components,” “accessories” and “attachments” that are “specially designed” for a commodity listed in this entry and that are not enumerated on the USML or controlled by another “600 series” ECCN.

5. In Supplement No. 1 to Part 774, between the entries for ECCNs 3D101 and 3D980, add a new entry for ECCN 3D611 to read as follows:

**3D611 “Software” “specially designed” for military electronics, as follows (see List of Items Controlled).**

License Requirements

*Reason for Control:* NS, RS, AT, UN

<b>Control(s)</b>	<b>Country chart</b>
NS applies to entire entry except 3D611.y	NS Column 1
RS applies to entire entry except 3D611.y	RS Column 1
AT applies to entire entry	AT Column 1
UN applies to entire entry except 3D611.y	See § 746.1(b) for UN controls

### **License Exceptions**

*CIV:* N/A

*TSR:* N/A

*STA:* 1. Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2)) of the EAR may not be used for any “software” in 3D611. 2. License Exception STA is not eligible for software for the “development,” “production,” operation, installation, maintenance, repair, or overhaul of items enumerated in ECCN 3E611.b.

### **List of Items Controlled**

*Unit:* \$ value

*Related Controls:* “Software” directly related to articles enumerated in USML Category XI is subject to the control of USML paragraph XI(d).

*Related Definitions:* N/A

*Items:*

a. Software “specially designed” for the “development,” “production,” operation, or maintenance of commodities controlled by ECCN 3A611 (other than 3A611.y), 3B611.

b. through x. [RESERVED]

y. Specific “software” “specially designed” for the “production,” “development,” operation or maintenance of commodities enumerated in ECCNs 3A611.y.

6. In Supplement No. 1 to Part 774, between the entries for ECCNs 3E292 and 3E980, add new entry for ECCN 3E611 to read as follows:

**3E611 Technology “required” for military electronics, as follows (see List of Items Controlled).**

License Requirements

*Reason for Control:* NS, RS, AT, UN

<b>Control(s)</b>	<b>Country chart</b>
NS applies to entire entry except 3E611.y	NS Column 1
RS applies to entire entry except 3E611.y	RS Column 1
AT applies to entire entry	AT Column 1
UN applies to entire entry except 3E611.y	See § 746.1(b) for UN controls

### **License Exceptions**

*CIV:* N/A

*TSR:* N/A

*STA:* 1. Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2)) of the EAR may not be used for any technology in 3E611. 2. Except for “build-to-print” technology, License Exception STA is not eligible for technology enumerated in ECCN 3E611.b.

### **List of Items Controlled**

*Unit:* \$ value

*Related Controls:* Technical data directly related to articles enumerated in USML Category XI is subject to the control of USML paragraph XI(d).

*Related Definitions:* N/A



*Items:*

a. “Technology” (other than that described in 3E611.b or 3E611.y) not otherwise enumerated in this ECCN “required” for the “development,” “production,” operation, installation, maintenance, repair, or overhaul of commodities or software controlled by ECCN 3A611, 3B611 or 3D611.

b. “Technology” “required” for the “development,” “production,” operation, installation, maintenance, repair, or overhaul of

(1) Helix traveling wave tubes (TWTs);

(2) Transmit/receive or transmit modules;

(3) Microwave monolithic integrated circuits (MMIC); or

(4) Discrete radio frequency transistors.

c. through x. [RESERVED]

y. Specific “technology” “required” for the “production,” “development,” operation, installation, maintenance, repair or overhaul of commodities enumerated in ECCNs 3A611.y or 3D611.y.

7. In Supplement No. 1 to Part 774, amend ECCN 4A003 by revising the License Requirements section to read as follows:

**4A003 “Digital computers”, “electronic assemblies”, and related equipment therefor, as follows (see List of Items Controlled) and specially designed components therefor.**

License Requirements

*Reason for Control:* NS, MT, CC, AT, NP

Control(s)	Country chart
NS applies to 4A003.b and .c	NS Column 1
NS applies to 4A003.e and .g	NS Column 2
MT applies to 4A003.e when the parameters in 3A101.a.4 are met or exceeded	MT Column 1
CC applies to “digital computers” for computerized finger-print equipment	CC Column 1

AT applies to entire entry (refer to 4A994 for controls on “digital computers” with a APP > 0.0128 but ≤3.0 WT)	AT Column 1
---	-------------

NP applies, unless a License Exception is available. See § 742.3(b) of the EAR for information on applicable licensing review policies.

***Note 1:** For all destinations, except those countries in Country Group E:1 of Supplement No. 1 to part 740 of the EAR, no license is required (NLR) for computers with an “Adjusted Peak Performance” (“APP”) not exceeding 3.0 Weighted TeraFLOPS (WT) and for “electronic assemblies” described in 4A003.c that are not capable of exceeding an “Adjusted Peak Performance” (“APP”) exceeding 3.0 Weighted TeraFLOPS (WT) in aggregation, except certain transfers as set forth in §746.3 (Iraq).*

***Note 2:** Special Post Shipment Verification reporting and recordkeeping requirements for exports of computers to destinations in Computer Tier 3 may be found in § 743.2 of the EAR.*

\* \* \* \* \*

8. In Supplement No. 1 to Part 774, between the entries for ECCNs 4A102 and 4A980, add a new entry for ECCN 4A611 as follows:

**4A611 Computers, and parts, components, accessories, and attachments “specially designed” therefor, “specially designed” for military use that are not enumerated in any USML category are controlled by ECCN 3A611.**

9. In Supplement No. 1 to Part 774, amend ECCN 5A001 by revising the Related Controls paragraph of the List of Items Controlled section, to read as follows:

**5A001 Telecommunications systems, equipment, components and accessories, as follows (see List of Items Controlled).**

\* \* \* \* \*

#### **List of Items Controlled**

\* \* \* \* \*

*Related Controls:* 1. See USML Category XV for controls on telecommunications equipment defined in 5A001.a.1 and any other equipment used in satellites that are subject to the ITAR. See USML Category XI for controls on direction finding equipment defined in 5A001.e and any other military or intelligence electronic equipment subject to the ITAR. 2. See USML Category

XI(a)(4)(iii) for controls on electronic attack and jamming equipment defined in 5A001.f and .h that are subject to the ITAR. 3. See also ECCNs 5A101, 5A980, and 5A991.

\* \* \* \* \*

10. In Supplement No. 1 to Part 774, between the entries for ECCNs 5A101 and 5A980, add a new entry for ECCN 5A611 as follows:

**5A611 Telecommunications equipment, and parts, components, accessories, and attachments “specially designed” therefor, “specially designed” for military use that are not enumerated in any USML category are controlled by ECCN 3A611.**

11. In Supplement No. 1 to Part 774, between the entries for ECCNs 6A226 and 6A991, add a new entry for ECCN 6A611 as follows:

**6A611 Radar, and parts, components, accessories, and attachments “specially designed” therefor, “specially designed” for military use that are not enumerated in any USML category or other ECCN are controlled by ECCN 3A611.**

12. In Supplement No. 1 to Part 774, ECCN 7A006, revise the Reasons for Control paragraph of the License Requirements section to read as follows:

**7A006 Airborne altimeters operating at frequencies other than 4.2 to 4.4 GHz inclusive and having any of the following ( see List of Items Controlled).**

License Requirements

Reason for Control: NS, MT, AT

<b>Control(s)</b>	<b>Country chart</b>
NS applies to entire entry	NS Column 1
MT applies to commodities in this entry that meet or exceed the parameters of 7A106	MT Column 1
AT applies to entire entry	AT Column 1

\* \* \* \* \*

13. In Supplement No. 1 to Part 774, ECCN 7D101, revise the heading to read as follows:

**7D101 “Software” specially designed or modified for the “use” of equipment controlled for missile technology (MT) reasons by 7A001 to 7A006, 7A101 to 7A107, 7A115, 7A116, 7A117, 7B001, 7B002, 7B003, 7B101, 7B102, or 7B103.**

\* \* \* \* \*

14. In Supplement No. 1 to Part 774, between the entries for ECCNs 9A120 and 9A980, add a new entry for ECCN 9A620 to read as follows:

**9A620 Cryogenic and “superconductive” equipment, as follows (see list of items controlled):**

*Reason for Control:* NS, RS, AT, UN

<b>Control(s)</b>	<b>Country chart</b>
NS applies to entire entry	NS Column 1
RS applies to entire entry	RS Column 1
AT applies to entire entry	AT Column 1
UN applies to entire entry	See § 746.1(b) for UN controls

#### **License Exceptions**

*LVS:* \$1500

*GBS:* N/A

*CIV:* N/A

*STA:* Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2)) of the EAR may not be used for any item in 9A620.

### **List of Items Controlled**

*Unit:* End items in number; parts, component, accessories and attachments in \$ value

*Related Controls:* Electronic items that are enumerated in USML Category XI or other USML categories, and technical data (including software) directly related thereto, are subject to the ITAR.

*Related Definitions:* N/A

*Items:*

a. Equipment “specially designed” to be installed in a vehicle for military ground, marine, airborne, or space applications, and capable of operating while in motion and of producing or maintaining temperatures below 103 K (-170°C).

Note to 9A620.a: ECCN 9A620.a includes mobile systems incorporating or employing accessories or components manufactured from non-metallic or non-electrical conductive materials such as plastics or epoxy-impregnated materials.



b. “Superconductive” electrical equipment ( rotating machinery and transformers) “specially designed” to be installed in a vehicle for military ground, marine, airborne, or space applications, and capable of operating while in motion.

Note to 3A610.b: ECCN 9A620.b. does not control direct-current hybrid homopolar generators that have single-pole normal metal armatures which rotate in a magnetic field produced by superconducting windings, provided those windings are the only superconducting components in the generator.

c. through w. [Reserved]

x. “Parts,” “components,” “accessories” and “attachments” that are “specially designed” for a commodity controlled by ECCN 9A620.

15. In Supplement No. 1 to Part 774, between the entries for ECCNs 9B117 and 9B990, add a new entry for ECCN 9B620 to read as follows:

**9B620 Test, inspection, and production commodities for cryogenic and “superconductive” equipment (see List of Items controlled).**

#### **License Requirements**

*Reason for Control:* NS, RS, AT, UN

<b>Control(s)</b>	<b>Country chart</b>
NS applies to entire entry	NS Column 1
RS applies to entire entry	RS Column 1
AT applies to entire entry	AT Column 1
UN applies to entire entry	See § 746.1(b) for UN controls

### **License Exceptions**

*LVS:* \$1500

*GBS:* N/A

*CIV:* N/A

*STA:* Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2)) of the EAR may not be used for any item in 9B620.

### **List of Items Controlled**

*Unit:* N/A

*Related Controls:* N/A

*Related Definitions:* N/A

*Items:* Test, inspection, and production end items and equipment “specially designed” for items controlled in ECCN 9A620.

16. In Supplement No. 1 to Part 774, between the entries for ECCNs 9D105 and 9D990, add a new entry for ECCN 9D620 to read as follows:

**9D620 “Software” “specially designed” for cryogenic and “superconductive” equipment, as follows (see List of Items Controlled).**

#### License Requirements

*Reason for Control:* NS, RS, AT, UN

Control(s)	Country chart
NS applies to entire entry	NS Column 1
RS applies to entire entry	RS Column 1
AT applies to entire entry	AT Column 1
UN applies to entire entry	See § 746.1(b) for UN controls

#### License Exceptions

*CIV:* N/A

*TSR:* N/A

*STA:* Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2)) of the EAR may not be used for any “software” in 9D620.

### **List of Items Controlled**

*Unit:* \$ value

*Related Controls:* “Software” directly related to articles enumerated on USML are subject to the control of that USML category.

*Related Definitions:* N/A

*Items:* Software “specially designed” for the “development,” “production,” operation, or maintenance of commodities controlled by ECCNs 9A620 or 9B620.

17. In Supplement No. 1 to Part 774, between the entries for ECCNs 9E102 and 9E990, add a new entry for ECCN 9E620 to read as follows:

**9E620 Technology “required” for cryogenic and “superconductive” equipment, as follows (see List of Items Controlled).**

License Requirements

*Reason for Control:* NS, RS, AT, UN

<b>Control(s)</b>	<b>Country chart</b>
NS applies to entire entry	NS Column 1
RS applies to entire entry	RS Column 1
AT applies to entire entry	AT Column 1
UN applies to entire entry	See § 746.1(b) for UN controls

### **License Exceptions**

*CIV*: N/A

*TSR*: N/A

*STA*: Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2)) of the EAR may not be used for any technology in 9E620.

### **List of Items Controlled**

*Unit*: \$ value

*Related Controls*: Technical data directly related to articles enumerated on USML are subject to the control of that USML category.

*Related Definitions*: N/A

*Items:* “Technology” “required” for the “development,” “production,” operation, installation, maintenance, repair, or overhaul of commodities or software controlled by ECCN 9A620, 9B620 or 9D620.

Dated: November 16, 2012

Kevin J. Wolf

Assistant Secretary of Commerce for Export Administration

[FR Doc. 2012-28396 Filed 11/23/2012 at 11:15 am; Publication Date: 11/28/2012]